

**Fun Striders, Inc. and Alejandro Ocana. Case 31-
CA-9493**

May 7, 1981

DECISION AND ORDER

On December 12, 1980, Administrative Law Judge Earldean V. S. Robbins issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt her recommended Order.²

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, and hereby orders that the Respondent, Fun Striders, Inc., Culver City, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

¹ Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing her findings.

² In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

DECISION

STATEMENT OF THE CASE

EARLDEAN V. S. ROBBINS, Administrative Law Judge: This case was heard before me in Los Angeles, California, on July 24, 25, and 28, 1980. The original charge was filed by Alejandro Ocana, an individual, herein called Ocana on October 22, 1979, and served on Fun Striders, Inc., herein called Respondent on October 23, 1979. A first amended charge was filed by Ocana on December 17, 1979, and served on Respondent on December 18, 1979. The complaint, which issued on January 7, 1980, alleges that Respondent violated Section 8(a)(1) of the National Labor Relations Act, as amended, herein called the Act.

The principal issue herein is whether Respondent violated Section 8(a)(1) of the Act by discharging certain employees because they engaged in concerted activities for mutual aid or protection.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of post-hearing briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. JURISDICTION

At all times material herein, Respondent has been a California corporation with an office and principal place of business located in Culver City, California, where it is engaged in the manufacture of shoes and handbags. Respondent, in the course and conduct of its business operations, annually sells and ships goods or services valued in excess of \$50,000 directly to customers located outside the State of California.

The complaint alleges, Respondent admits, and I find that Respondent is now, and has been at all times material herein, an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. BACKGROUND

Respondent is engaged in the manufacture of shoes for women and juveniles. During most of 1979, Respondent operated three plants known as the Redwood plant, the Faultline plant,¹ and the Slauson plant. The Slauson plant was closed in November 1979. Jack Atkins, director of manufacturing, was in charge of the shoe manufacturing at all three plants. His office is located at the Redwood plant but he visits the other plants almost daily. He estimates that he spends 40 percent of his time in or near the production areas of the various facilities.

Reporting to Atkins as of October 1, 1979,² were Harold Fitzwater, superintendent of Redwood; Roco Vitale, superintendent at Faultline; and Frank MacNichol, the former superintendent at Redwood, who was temporarily overseeing the Slauson plant; two associate superintendents at Slauson, Yercho Samuelian and Fernando Perez reported to MacNichol on about October 15, MacNichol succeeded Vitale as superintendent at Faultline. The assistant superintendent at Faultline was Guillermo Quintero, sometimes known as Memo. His assistant was Vicente Jiminez. The assistant superintendent at Redwood was Jesus Ortiz. Many of the employees spoke Spanish and little or no English. Quintero or Ortiz was often used as an interpreter in conversations between Spanish speaking employees and Atkins and/or MacNichol.

Many of Respondent's employees are paid on a piecework basis at a rate established by time studies. The employees involved herein are classified as stapelasters. The stapelaster performs a function which is unique to a certain style of nail construction shoe. The job of the stapelaster—one of the highest paid classifications in the plant—is to use air powered staple guns to staple the upper portion of the shoe over a replica of a woman's foot referred to as a last, onto the wooden bottom of the shoe at points on the bottoms which are premarked. The nailers then place the nails in the shoe.

Stapelasting is a process developed by Respondent in late 1976, or early 1977 for this particular type shoe. At that time Respondent had only two plants, Slauson and

¹ Also known as the Eastham plant.

² All dates herein will be in 1979 unless otherwise indicated.

Redwood. Initially most of the stapelasting was done at the Slauson plant. When the Faultline plant opened in late 1978, more than 90 percent of the stapelasting work was transferred to Faultline and most of the stapelasters at Slauson were transferred to Faultline, including the six alleged discriminatees herein. According to Atkins, with the exception of Ocana whom Atkins considered to be a skilled regular laster, none of the alleged discriminatees had any experience in shoemaking other than stapelasting. Initially, Ocana was transferred to Faultline as assistant foreman. However, after several months, he was reassigned to piecework stapelasting.

Since most of Respondent's employees are paid on a piecework basis, from time to time there is some dispute as to the piece rates and at times there have been work stoppages connected therewith by employees in various classifications. According to Atkins, the appropriate time for employees to question the piece rate is shortly after the introduction of a new style following the completion of the timestudy. Once the timestudy is complete, pay adjustments are made retroactively for any underpayments made prior thereto. The stapelasters are paid seven-tenths of a cent per staple.³ The number of staples required varies from style to style. Atkins testified that stapelasters averaged between \$6 and \$9 an hour.

There is some dispute as to whether the stapelasters engaged in several work stoppages prior to October in connection with wages. Atkins testified that he recalls three work stoppages. One alleged work stoppage occurred on about December 19, 1979. Shortly prior thereto, MacNichol had discovered that the stapelasters were not stapling over the last. He insisted that they do so. The six stapelasters all proceeded to Redwood to speak to Atkins. The record does not indicate whether they requested and/or received permission to go to Redwood to speak with Atkins. Atkins refused to see the entire group but did agree to speak to two of them, Ocana and one other. Atkins said that the stapling had to be done over the last. He further stated that if the employees desired, another timestudy could be performed but they would be paid in accordance with the results of the timestudy whether it was more or less than the present rate. The employees decided not to request a new timestudy and they returned to work that same day.

In February, Vitale informed MacNichol that the stapelasters had stopped working. There was another dispute about the same BO-1 style, quality considerations or not performing adequately, which Vitale said he could not resolve. He said the stapelasters wanted to speak to Atkins. All of the stapelasters went over to Redwood. Again, there is no evidence on the record as to whether they requested and/or received permission to go to Redwood. As on the previous occasion, Atkins would only speak to two of them. Atkins' response was the same, that there was one definite way of making the shoe and that was the method they were going to have to use. He further said the compensation was fine, it had been tested and tried, and he suggested that they return to work, which they did immediately.

³ This is the basic piece rate for a style, however, some upward adjustments may be made for narrow straps, etc.

The employee's witnesses did not recall the December and February disputes. They did recall a dispute in August involving the V-80 style. According to Ocana, they asked Vitale if the price could be increased. He said he would speak to Atkins. The stapelasters continued working. Vitale told them that Atkins said he could not increase the price. The stapelasters then went to Redwood during working hours. Ocana did not recall whether they requested and/or received permission to do so. DeReuda testified that Quintero gave them permission. Ocana and employee Noel Gonzales spoke to Atkins. Ortiz acted as interpreter.

According to Ocana, they told Atkins that the price on the V-80 style was low. Atkins started yelling and throwing the shoes on his desk. Ocana said Atkins did not have to yell at them, they merely wanted to talk to him. Atkins calmed down and said "Okay." Ocana said they wanted to talk to him because he was the only person to whom they could go, that he was the one who decided everything. Atkins said that was fine. Ocana explained the stapelasters' position. Atkins said, "Okay, I am going to send my timekeeper to take your time at work, but you seem like little boys."

Ocana testified further that "[Atkins] said that if we would bother him at his office again, not to even arrive because we would find that he had people that were in charge of those kinds of problems. And I told him, 'Yes, it is true, you do have people, but they never decide on the problem.' And that is when he said, 'Okay, you seem like little boys.' Then he said, 'Return to work.' And we returned to work." Upon being asked if Atkins said anything in English, Ocana testified that Atkins said in English, "If you come again to my office you are fired because you are looking like a little kid, go back to work." The stapelasters then returned to work. Thereafter the price for stapelasting that style was increased.

Quintero testified that the stapelasters were involved in four or five work stoppages prior to October, none of which lasted more than 20 minutes. However, he only testified specifically regarding the one in August, which concerned the V-80 style, when he interpreted a conversation between Atkins, Vitale, and the stapelasters. Quintero testified that the stapelasters complained to him about the pay rate of the V-80 style. Quintero told Vitale about the complaint and Vitale said he would speak to Atkins. A week or two thereafter, Quintero testified, he was used as an interpreter during a conversation between Atkins, Vitale, and the stapelasters.

According to Quintero, the stapelasters said they had a problem with "the arrangement of the shoes about the last." Atkins said the price was perfect, that they were not going to lose money, but he did not want them to stop working and if it happened again, he was going to replace them. He denies that Atkins said he would discharge them. Quintero testified in Spanish. However, on cross-examination, he was asked to relate in English what Atkins said. In response, he testified:

A. It's adjustable, the shoe, we can take a staple, we can take nail or take the last, we figured out how to make arrangements with them with the shoe.

Q. Is that all Mr. Atkins said during that conversation?

A. Well, he said that there was going to be arrangements on the price because we go by the staples. How many staples, how many nails, you know.

Q. So, he said that he was going to make some arrangement with the piecework rate?

A. By piece.

Q. Did he say anything else to the staplers during that conversation?

A. I do not remember. It's been so long about that.

Quintero further testified that Atkins was speaking in a normal tone of voice and did not appear to be angry. He did not testify as to where the conversation took place. He did testify that he thinks he remembers the staplelasters leaving the plant in August to speak with Jack. Although he was asked if they had permission to leave the plant, he did not specifically answer. He merely testified, "they left."

Atkins testified that in August, Vitale told him that the staplelasters had stopped working. Atkins told him to keep them working and he would come to the Faultline plant immediately; about a half hour later he spoke to the staplelasters in Vitale's office. According to Atkins, the staplelasters said they needed more money because they were putting in more staples. Atkins said Respondent had not yet determined the number of staples. He said the price would be per staple and when the final determination was made, the price would be adjusted to reflect it.

He further said he would not countenance this type of stoppage, that economic conditions were too tough. He said that if they had any problems, they could resolve the problems as gentlemen. If they could not resolve it satisfactorily, then it was up to the staplelasters to do what they wanted, but Respondent knew what it could do. Atkins also said that Respondent had standards, they were not negotiating, they were not bargaining. The standards were very clear and they would not countenance another stoppage such as this, that if there was another unwarranted work stoppage of this nature, he would do his best to try to replace them. He denied that he told them they would be discharged.

According to Atkins, at the time of a work stoppage by another group of employees previous to this occasion, he consulted legal counsel and was advised that he had a right to replace, but not to discharge, employees who engaged in work stoppages. Atkins also denied that this conversation or any other regarding the V-80 style took place at Redwood or that he spoke in other than a normal tone. Vitale did not testify.

III. THE ALLEGED UNFAIR LABOR PRACTICES

Ocana testified that on October 19 when the staplelasters reported for work, the only style available for them to work on was the B-89 which paid 8-1/2 cents. Staplelaster Rodriguez Munoz DeRueda told Jiminez that they wished to speak to Quintero about increasing the piecework rate for the B-89 style. Jiminez said yes they could

speak with Quintero, that he would call him. They did speak to Quintero, who said he would discuss the matter with MacNichol. At some point, Quintero said the staplelasters could speak to MacNichol in his office.

The six staplelasters spoke to MacNichol, Quintero interpreted. According to Ocana, they asked for an increase in price on the B-89 style. MacNichol said the price could not be increased. The staplelasters asked why it could not be increased since it was the same style as the K-71. By this, Ocana testified, he meant that the two styles required the same number of staples. MacNichol said he did not have any more time, that he could not do anything more. Whereupon the staplelasters left and returned to their work stations.

DeRueda testified that when the staplelasters spoke to Quintero on October 19, Ocana said they wanted an increase in the price. Quintero said he would talk to MacNichol and left. When he returned Quintero said the price could not be changed. The staplelasters asked to speak to MacNichol. Quintero again left. When he returned he told the staplelasters they could speak to MacNichol, whereupon they went to MacNichol's office.

DeRueda also testified that Ocana told MacNichol that they wanted an increase in price for that particular style. MacNichol said Respondent could not increase the price. He further said that if the staplelasters wanted to work, they should return to their work stations and if they did not want to work, not to work. At some point during the conversation, Ocana compared the disputed style with the work required and the price paid for another style. MacNichol said Respondent had made an error on the other style. The staplelasters returned to their work stations.

MacNichol, who had recently suffered a stroke, was not available to testify nor did Jiminez testify. However, MacNichol gave a prehearing statement to a Board agent during which he was represented by Respondent's counsel. According to his statement, Quintero told him that there was a problem with the staplers, they did not want to work on the B-89 style. MacNichol asked if they were working. Quintero said no, that they wanted to talk to MacNichol. MacNichol said, "I will talk to a couple of them if they go back to work." Quintero left and then returned to MacNichol's office with all six staplelasters. MacNichol said he would not discuss any problems unless they were working. The staplelasters talked among themselves and then one of them said they were willing to do all styles except the B-89. MacNichol said the price of the B-89 was correct and if they did not do all of the styles, they could not do any of them. The staplelasters left his office at this point.

Quintero testified that about 8 a.m., Jiminez told him that the staplelasters had stopped working. Quintero went to their work area and inquired as to what was the problem. One of the staplelasters said the price was too low, that they wanted to speak with MacNichol. Quintero testified that he went to the office and told MacNichol what the staplelasters said, that they wanted to speak to him. MacNichol told Quintero to have two of the staplelasters come to the office. Quintero returned to the work area. The staplelasters still were not working.

Quintero said that two of them should go to MacNichol's office. Instead, all six of them went to speak to MacNichol. Quintero was the interpreter for this conversation.

According to Quintero, MacNichol asked what the problem was. The stapelasters said the price was low. MacNichol said the price was correct, they should return to work and he would talk to Quintero. The stapelasters returned to their work area.

I do not credit MacNichol and Quintero that MacNichol told Quintero he would only talk to two of the employees or that Quintero said only two should go to the office. Nor do I credit MacNichol that he told the employees he would only talk to them if they were working. In this regard, I note that all six stapelasters did go to the office without any apparent attempt on Quintero's part to stop them or to caution them as to the consequences of such conduct. I further note that MacNichol did speak to all six of them.

Later that morning, about 10 o'clock, according to Ocana, Quintero told the stapelasters that they could not talk inside the department, that if they wanted to have a meeting they would have to go outside. Ocana asked Quintero to give them a minute to talk. Quintero said, "No, leave." According to Ocana, at the time of this conversation, the stapelasters were all working but as they worked, they were talking about the price dispute and what had happened in that regard. At some point during this conversation with Quintero, Jiminez began yelling that they would have to go outside.

According to DeRueda, within about 1 or 2 minutes after they arrived back at their work stations, Quintero came into the work area and said they could not be standing and not working.⁴ Ocana said they were thinking about what they were going to do. Quintero said that if they wanted to think about it to go outside. At this point, DeRueda testified, "'Vincente [Jiminez] tried to obligate Ocana to work by yelling.' Ocana answered, 'You cannot obligate a worker to work by yelling or with yells.' At that instance . . . [Quintero] said again, 'If you want to think about it, go outside, and you are fired.'"

MacNichol stated in his affidavit that shortly thereafter, Quintero told him that the stapelasters were not working, that they were meeting. MacNichol told him to ask them to leave the plant if they were not working, to hold their meeting outside the plant.

Quintero testified that around 9 a.m., Jiminez reported to him that the stapelasters were not working. Quintero went to the work area and told the stapelasters, "Please, do not stop working." One of them said they were only going to work on one style, that they were not going to work on the other ones for nothing.

Quintero further testified that he reported this to MacNichol. MacNichol instructed him to tell the stapelasters to work on all the styles, and if they were not going to work for nothing, they should go outside. Quintero returned to the work area and told the stapelasters that

they should either work or go outside, whereupon the stapelasters left the plant.

It was payday for the preceding workweek which ended on Thursday and around the time the stapelasters went outside, Quintero gave them their regular paychecks. The paychecks did not include the additional remuneration for the current workweek, etc., which should have been included in a final paycheck upon an employee's separation from Respondent's employ.

I do not credit DeRueda that Quintero said they would be discharged if they went outside. This is a statement that one would expect an employee to remember. Yet, Ocana's account of what was said does not corroborate DeRueda in this regard. Nor do I credit Quintero that the employees said they were only going to work on one style, that he reported this to MacNichol, or that MacNichol instructed him to tell them to work on all the styles. MacNichol's account does not corroborate Quintero's in this regard and, according to Quintero's own account of his conveyance of MacNichol's message to the stapelasters, he never mentioned that MacNichol said they should work on all styles. Also, I do not credit Ocana that, on October 19, the stapelasters were working when Quintero asked them to leave the facility. Both DeRueda and Quintero testified that, at that particular point in time, they were not working, and I so find.

According to Ocana and DeRueda, the employees left the building and went into the parking lot where they discussed the situation. They expressed some uncertainty as to whether they were in fact discharged since despite Quintero's telling them to leave, the paychecks they were given were not final paychecks and they had not received termination papers. Adding to the confusion was the fact that Friday was payday. According to DeRueda's uncontradicted testimony, they received their paychecks in the past depending upon quitting time. Further, it is undisputed that quitting time varied at least recently since they sometimes worked less than an 8-hour day and they never knew from one day to the next how many hours they would work. They decided to go home and return to work on Monday. According to DeRueda, they decided to go home since they had received their paychecks which indicated that there was no more work to do that day.

Ocana and DeRueda testified that they attempted to return to work on Monday, October 22, but were prevented from doing so. Respondent's witnesses agreed, but contended that they did not attempt to return to work until Tuesday, October 23.

According to Ocana, on October 22 he arrived at the plant about 5 or 10 minutes prior to the 7 a.m. beginning of the shift. He attempted to enter through the entrance near the parking lot which is normally used by employees.⁵ The guard told him he could not enter. Ocana asked why. The guard said entrance was prohibited to the stapelasters. DeRueda also testified that on Monday when he attempted to enter the plant through the entrance near the parking lot, the guard told him he could

⁴ At one point his testimony seems to indicate that this occurred prior to their commencing work. Later he testified that they commenced work, then they stopped for 1 or 2 minutes to discuss what they should do.

⁵ There are two entrances which may be used by employees, the one near the parking lot and one on another side of the building near the main entrance. The door near the main entrance is closed about 7 a.m.

not go inside; that he had orders from the office that none of the stapelasters could enter. According to Ocana and DeRueda they observed, from the parking lot, other stapelasters attempting unsuccessfully to enter the plant. These other stapelasters told them that the guard had refused them entry.

According to Quintero, at 7 a.m. the same day he saw the stapelasters standing outside the plant. Quintero testified on direct examination that between 6:30 and 7 a.m., MacNichol told him to tell the guard that if the stapelasters attempted to enter, he should refuse them entry through the back door and have them enter through the front door and talk to MacNichol. Quintero testified that he told the guard what MacNichols said. On cross-examination, Quintero's account makes no mention that the stapelasters should talk to MacNichol. Rather, he testified that all MacNichol told him was that they should be refused entry through the back door and told to go to the front door. He further testified that this was all he told the guard and that his conversation with the guard was about 7:15 a.m.

The guard, Jose Garcia, testified that about 7 or 7:15 a.m., on October 21 or 22, Quintero told him not to let the stapelasters enter because they did not want to work. In response to leading questions, he further testified that Quintero said to tell them to use the main door, to go through the main office, that he wanted to speak with them. About 7 or 7:15 a.m., according to Garcia, the six stapelasters attempted to enter the plant together at the back door. He told them, "Look, you're not going to be able to come in to work." They said, "No, we're going to go in by force." Garcia said, "No, by force you cannot come in. This is a door for going out." He later testified that he told them to go around to the main entrance.

On cross-examination, Garcia testified:

Q. Mr. Garcia, if the employees had arrived before 7:00 a.m., would you have allowed them to enter?

A. Yes.

Q. So the problem, as far as you could see it, was that they arrived after 7:00, correct?

A. No.

Q. What was the problem, then?

A. I heard talks about they didn't want to work for that price—that they didn't want to staple.

Q. So you didn't want to let them in because they were on strike?

A. Yes.

Q. And that's what Mr. Quintero told you to do?

A. Yes.

I credit Ocana and DeRueda that on October 22, the guard, Garcia, told them that he had been instructed not to permit the stapelasters to enter the premises. I do not credit Quintero that he told Garcia simply to tell the stapelasters to go to the other entrance and talk to MacNichol. In this regard, I note that although initially Quintero testified that he told Garcia to tell them to go to the other door and talk to MacNichol, on cross-examination Quintero's account makes no mention that he said the stapelasters should speak to MacNichol. Initially, Gar-

cia's account does not mention going to the main door but in response to questions as to whether Quintero made certain specific statements, he testified that Quintero instructed him to do so, and further testified that they were to speak to Quintero, not to MacNichol, as Quintero testified. Furthermore, I do not believe that these employees, who had never shown any reluctance to talk to management, would not have talked to MacNichol or Quintero if they had been instructed to do so.

Also, in both his initial testimony and in his final testimony on cross-examination, Garcia testified that Quintero told him not to let the stapelasters enter because they did not want to work for the price set by Respondent and initially he testified that he told the stapelasters simply that they could not enter. He also testified that he said that the door by the parking lot was an exit only. Yet the testimony was finally clear that once the door near the main entrance was closed, the only entrance available to employees was the one near the parking lot. Thus, any statement that this door was for exit only would have been illogical.

I find that Quintero told Garcia to refuse entry to the stapelasters because they were on strike and did not give any instruction as to the procedure they should follow if they offered to return to work. I also credit Ocana and DeRueda that they attempted to enter the plant shortly before 7 a.m. I do not credit Quintero that he gave the instructions to the guard about 7:15. Allegedly, MacNichol gave Quintero instructions prior to the 7 a.m. beginning of the shift. At the beginning of the shift, he knew that the stapelasters were outside. There was no logical reason to wait until 7:15 to convey these instructions to the guard since the stapelasters could have attempted to enter at the beginning of the shift. I also credit Ocana and DeRueda that Garcia told them simply that he had instructions to refuse entry to the stapelasters.

Ocana and DeRueda testified that upon being refused entry, the stapelasters discussed the situation in the parking lot and decided to go to the Redwood plant to speak to Atkins. Before they left, two employees, both stapelasters, from the Redwood plant arrived at the parking lot. DeRueda and Noel Gonzales, a Faultline stapelaster, talked to them. According to DeRueda, the Redwood employees asked if there was any work. One of the Faultline employees explained about their dispute over the price of the B-89 style and that they had been refused entry into the plant. The Redwood employees agreed that the price was bad and said that they did not want to be involved in the problem. One of the Faultline stapelasters said that if the Redwood employees wanted to go into the plant, they could. The Redwood employees said no, and left.

On direct examination, Ocana testified that he did not hear all of the conversation but he did hear Gonzales ask if the Redwood employees were stapelasters. The Redwood employees said yes, they had been sent over from Redwood. Gonzales explained the dispute over the price of the B-89 style. The Redwood employees said that if they had known about the dispute, they would not have come. The Redwood employees then left the Faultline facility. On cross-examination, Ocana testified that he

could not hear the conversation, that DeRueda told him what was said.

Javier Sanchez testified that he was one of the four Redwood stapelasters who were sent to Faultline to work on October 22. They proceeded to Faultline in two cars. The car he was in arrived at Faultline last, about 10 or 11 a.m. When he arrived, he heard one of the Faultline employees say that they were on strike because the price had been lowered. One of them further said that if the Redwood employees went inside, then the Faultline stapelasters could be discharged. The Redwood employees had not been previously informed of this dispute so they decided not to go into the Faultline plant to work and perhaps cause the discharge of the Faultline stapelasters. DeRueda denies that anything was said about what might happen to the Faultline stapelasters if the Redwood stapelasters went into Faultline to work. Rather, according to him, they told the Redwood employees that they had been discharged.

I credit Sanchez as to the time and substance of the conversation between the Faultline stapelasters and the Redwood stapelasters and as to his subsequent conversation with Ortiz. He impressed me as an honest, reliable witness who was endeavoring to testify truthfully. Further, he is still in Respondent's employ and has nothing to gain by testifying favorably to the General Counsel.

Ocana testified that after the Redwood employees left the Faultline facility, all six of the Faultline stapelasters went to the Redwood facility. They arrived Redwood around 10 a.m. They explained to Ortiz that they had a problem with the B-89 style and asked to speak to Atkins. Ortiz left and returned with Atkins. According to Ocana, before the stapelasters had an opportunity to say anything, Atkins began yelling that he did not want to speak with them, that they had left work on Friday and were discharged because of that. Ortiz translated Atkins' remarks. Atkins left and then Ortiz told the stapelasters they should talk to MacNichol and see if anything could be worked out.

DeRueda testified in essential corroboration of Ocana. According to him, when they arrived at Redwood, they spoke to Ortiz. Ocana explained to Ortiz that they had a problem with two styles that were the same work but the piece rate for one was higher than for the other and the only style they had to work on was the lower paid style. When Atkins came in to speak to them, he was speaking loudly. Ocana said it was not necessary to yell, that the problem could be solved calmly. Ortiz attempted to translate and then said, "I'm sorry. I cannot speak. He does not let me speak."

DeRueda further testified that Atkins said some other things that he does not remember very well. Atkins was shouting. Atkins said he had warned them in August that if they stopped again, they would be discharged. Atkins said he had nothing to talk to them about, that they had been discharged and he was a very busy person. Ortiz translated these remarks. He also said that two of them should go to Faultline and speak to MacNichol.

Atkins and Ortiz admit that they spoke to the stapelasters but contend that the conversations occurred on Tuesday, October 23, not on Monday, October 22. Ortiz testified that about 9 a.m. on October 23, the receptionist

called him to the lobby in the Redwood plant. The six Faultline stapelasters were there. They told him they wanted to speak to Atkins. Ortiz related this request to Atkins who said he would speak to them in 5 or 10 minutes.

According to Atkins, he then telephoned MacNichol and asked what was going on. MacNichol said, "You know them. I mean they want to find out what goes. They have been replaced." Shortly thereafter, Atkins went into the lobby and spoke to the stapelasters, Ortiz acted as interpreter. Atkins testified that he asked what the problem was. One of them said they came to discuss prices. Atkins said, "What is there to discuss? Our prices for that particular craft, or your particular craft that you are in, are set by standards. You know what the prices are. What is it you want to talk about?" They said they needed jobs, they wanted to work. Atkins said, "Well, look, you have been replaced. We have people on-board."

Atkins also testified that he further told them that at the time of the August dispute, he had told them that if they ever pulled a stunt like that again he would do his best to replace them. He then said that if any of the people they had put on did not work out or if there were any openings, they would be called. Atkins denies that he lost his temper but admits that he spoke firmly and perhaps a bit loudly which is normal for him.

Ortiz testified that Atkins asked what happened. One of the stapelasters said they wanted to discuss the price of one shoe. Atkins said the price was already established and the best thing they could do was to return and speak with MacNichol and Quintero. The stapelasters said that MacNichol and Quintero did not want to listen. Atkins said that perhaps it was because they had stopped working and if they returned to work, maybe they would listen. Atkins suggested that two of them speak to MacNichol. He said he could not do anything, they had to return and speak with MacNichol.

When specifically asked if there was any discussion about their jobs, Ortiz testified that the stapelasters asked to be returned to their jobs. Atkins said they should speak to MacNichol to see if there were any vacancies. Later he testified that Atkins said they had been replaced. Both Ortiz and Atkins deny that Atkins said they had been discharged. After Atkins left the lobby, the stapelasters asked Ortiz what they could do. Ortiz replied that the only thing they could do was to speak with MacNichol.

Ocana further testified that they returned to Faultline. He and Fidel Campo went inside through the main entrance. No guard was posted there. Ocana asked Ortiz if they could speak to MacNichol. Ortiz said he would speak to MacNichol. When he returned he said the stapelasters could go into MacNichol's office. When they arrived in the office, Quintero acted as interpreter. MacNichol said they had been discharged, and he did not want to speak with them. Ocana asked why they were discharged, that they had not left work. MacNichol said he no longer needed the services of the stapelasters or a nailer. Ocana asked if that was the last word. MacNichol said yes. Ocana and Campo returned to the other staple-

lasters and reported what MacNichol said. Campo did not testify.

MacNichol and Quintero also admit Quintero spoke to the stapelasters but contended it was on October 23. Ortiz testified that about 7 a.m. that day he saw Ocana and other Faultline stapelasters in the lobby and Ocana said they had come to work. Quintero went to MacNichol and told him this. MacNichol told him to tell them they had been replaced but if the persons who had replaced them were not happy, they would be recalled. Quintero returned to the lobby and told them, "Boys, we replaced you. But, if the ones that replaced you are not happy and do not do the work well, we will call you."

In his affidavit, MacNichol stated:

On Monday, October 22, the six staplers came to the plant and hung around outside all day. I did not have any discussions with them that day. On Tuesday October 23, Memo told me that the staplers were at the lobby, it was 7 a.m. I told Memo to tell them that they had been replaced and that I had promised the people on the staple jobs that if they made out I would keep them but if they could not do the job I would talk to the six staplers.

Both Quintero and MacNichol denied that MacNichol ever told Quintero to tell the stapelasters that they were discharged and Quintero denies that he ever did so. Quintero denied that on October 23 the stapelasters asked to speak to MacNichol. He also denies that on October 22 they spoke to him and MacNichol.

When asked why he thought his conversation with Ocana and the other stapelasters occurred on October 23, Quintero testified, "Because the day before I had talked with Chuey Ortiz about the people he was going to send from Redwood." Yet he admits that he talked to Ortiz on both Friday, October 19 and Monday, October 22.

Atkins testified that he was sure the conversation occurred on October 23 because that was the day that he notified persons at the Slauson plant that the plant would be closed in November. Yercho Samuelian, superintendent of the Slauson plant, testified that on October 22, about 11 a.m. Tigram Pogossian asked him for a job and told him the Faultline stapelasters were on strike. Samuelian said he did not have a job. Pogossian said he did not really want to go on strike but he was afraid of the other stapelasters and asked Samuelian to tell Atkins this. The next day, according to Samuelian, he saw Pogossian and several others standing in the yard in front of the Redwood office door about 8 or 8:30 a.m. Pogossian came over and again asked Samuelian to speak to Atkins. When he left the Redwood plant about 9 a.m., Pogossian and the others were still there. At this time, Pogossian told Samuelian they were going in to talk to Atkins. About a half hour later, Atkins came to the Slauson plant and informed him that the plant would be closed.

Ocana and DeRueda testified that on October 22, following their conversations with Atkins and MacNichol, the six Faultline stapelasters went to the Regional Office of the National Labor Relations Board and filed a charge

alleging that they had been discharged in violation of the Act. They both testified that they gave statements to a Board agent on that same day. However, although Ocana's statement is dated October 22, DeRueda's statement is dated November. The date of the month is not very legible. The Spanish version appears to be November 22, but the English version appears to be November 2. DeRueda testified that the date is incorrect and should be October 22.

The date of these statements is critical since the statements recite the last conversations with Atkins and MacNichol as having occurred on October 22. Respondent argues that it is unlikely that the statement was made on the same day the charge was filed. However, neither facts nor logic supports this assertion. Respondent makes other arguments unsupported by evidence that the date of the statements could not possibly be October 22. I find no merit in these arguments. Ocana's statement is dated October 22 and the body of the statement recites "Today, October 22" I find this much more convincing than Respondent's arguments. I also find it more convincing as establishing the date of the conversations than the varied reasons given by Respondent's witnesses for recalling that the conversation occurred on October 23.

I therefore find that the stapelasters' last conversation with Atkins occurred on October 22. I further find that they had a conversation with MacNichol on that date. In this regard I note that Ortiz admits that Atkins told them to speak with MacNichol. Since they were clearly taking what steps they thought might secure their reinstatement, I find it unlikely that they would have ignored Atkins' suggestion that they speak to MacNichol. I do not credit Ocana and DeRueda that Atkins and MacNichol said they had been discharged. Both Atkins and MacNichol were cognizant of the legal difference between discharging and replacing employees, at least in broad outline, and were probably alert to the danger of using the wrong phraseology. On the other hand, to an employee who has just lost his job, the distinction between "discharge" and "replace" is a subtlety apt to elude him.

Respondent contends that the stapelasters had been replaced before they offered to return to work. In support thereof, Atkins testified that on October 19, about 9 a.m., when he was at Faultline, he observed the stapelasters standing at their work station, but not working. He attached no significance to this. Then when he went into MacNichol's office, MacNichol asked if the stapelasters had said anything to him. Atkins said no and asked why. MacNichol said they stopped working about an hour or an hour and a half previously. Atkins remarked, "Well, so what else is new" and then asked what the reason was. MacNichol said there was a problem about the B-89 style. Atkins remarked, "After all this time?"⁶ and said that if they did not return to work within a reasonable period of time, to replace them.

According to Atkins, he further mentioned that he had told the Faultline stapelasters in August that if they engaged in an unwarranted work stoppage again, he would

⁶ According to Atkins, he made this remark because the B-89, which was made only at Faultline, had been in production for about 5 months.

replace them. Atkins also said that there would be no difficulty replacing them inasmuch as the demand for the product was decreasing, they were already working shorter hours, and in just a short time they would have too many full-time employees. Atkins further said that MacNichol should first choose as replacements any in-plant personnel he might want to train and that he was sure that two or three stapelasters from Redwood would be happy to come over to Faultline since they would soon have no jobs. In the meantime, Atkins said they could send some stapling work over to Redwood and that way they could keep the Faultline nailers busy.⁷ Atkins returned to Redwood following this discussion and shoe parts were transported to Redwood that day and on Monday for the stapelasting operation and then returned to Faultline for the ensuing nailing and finishing operations. Neither Atkins nor any other of Respondent's witnesses explained who performed this stapelasting work at Redwood that day since Ortiz testified that he could not comply with Quintero's request for stapelasters since the Redwood stapelasters had been sent home for the day.

Atkins also testified that in late morning or around noon on October 19, MacNichol telephoned and told him the stapelasters had been told to either work or clock out and that they left around 10:15. Atkins asked if they were returning. MacNichol said he did not know. Atkins said, "Well, look, this is sort of unusual, you know, in past occasions, they never stopped this long. Maybe they have quit. Let's go ahead with the idea of replacing them." MacNichol said he was already in the process of transferring a couple of employees from within the Faultline plant who knew the craft.

Atkins testified that he further said, "The total number of people you will need is going to diminish as time goes on, so certainly two or three more people should be sufficient to do the job, and you want to take these, or at least a couple of them from Redwood." Atkins further said, "Of course, we don't know what has happened to the crew that went out. Perhaps they have quit. They aren't fired. We will treat the situation as though they have been replaced. I told them that I would attempt to replace them if, in fact they did this type of—carried on this type of activity in the future. I told them so in August." According to Atkins, he mentioned several times that these would be permanent replacements.

Atkins also testified that on October 22, he visited the Faultline facility about 8:30 or 9 a.m. The Faultline stapelasters were milling around on the sidewalk by the parking lot. He did not speak to them and they made no attempt to speak to him. That morning MacNichol told him that an ex-employee at the Slauson facility, Gomez, had suddenly applied for the job and had been hired. DeRueda said that two replacements, Vasquez and Estrella, had already begun work. Also the assistant foreman was helping out and some replacements from Redwood were on the way. Atkins testified that he did not return to Redwood until late morning.

MacNichol's affidavit makes no reference to these conversations. Nor does it mention any discussion of perma-

nent replacements. He simply stated therein "Since the work stoppage had disrupted production, we put two people from here on stapling and called two people from Redwood."

Quintero testified that when the stapelasters left the building on October 19, he reported the situation to MacNichol. MacNichol instructed him to call Ortiz at Redwood and asked him to send over some help. MacNichol also told Quintero that two Faultline employees, Vasquez and Estrella⁸ had some experience stapelasting and they should be transferred to stapelasting. MacNichol said nothing regarding how long these persons were to do stapelasting at Faultline.

According to Quintero, he spoke to Vasquez, an employee in the packing and cleaning department about 10:30 a.m. on October 19. He asked Vasquez if he wanted to staple; Vasquez said yes, but he wanted permission to take some time off that day and would start stapelasting on Monday, October 22. He also told Estrella that there was an opening for stapelasting work and asked if he wanted to staple. Estrella said fine. Estrella began stapling after lunch on October 19 and worked continuously thereafter as a stapelaster.

Quintero also testified that he telephoned Ortiz about 10:15 a.m. on October 19, told him the situation at Faultline, and asked him to send them help. Ortiz said he would see what he could do. When no help had arrived by afternoon, Quintero again telephoned Ortiz and asked what happened. Ortiz said that the Redwood stapelasters had already left for the day so he would have to see what happens on Monday. On cross-examination, Quintero denied that he telephoned Ortiz a second time on October 19 to inquire as to the whereabouts of the Redwood staplers.

About 7:15 a.m., on October 22, according to Quintero, he telephoned Ortiz and again inquired regarding the stapelasters who were to be sent over from Redwood. Ortiz said he had already sent them. Quintero said they had not arrived. Later that morning, upon another inquiry by Quintero as to the whereabouts of the Redwood stapelasters, Ortiz said they had returned to Redwood because the Faultline stapelasters stopped them and told them that if they went inside the Faultline plant, they were going to hit them. Quintero said he needed the stapelasters and that Ortiz should tell them to enter through the other door.

Stapelasting work was done that day at Faultline allegedly by Vasquez and Estrella, and Jimenez did stapelasting for a few hours. Also on October 22, Gomez was hired and began work stapelasting at Faultline on October 23. The record does not indicate when on October 22 Gomez was hired. According to Quintero, Jimenez told him about Gomez about 7 a.m. on October 22. He did not relate the conversation. Jimenez did not testify. Stapelasters Barrosa and Martinez from Redwood began working Faultline about 11 a.m. on October 23.

Ortiz testified that on October 19 Quintero telephoned him and told him he had problems with the stapelasters, they had quit and asked if he could send over some Red-

⁷ Nailing was the next step in the production process.

⁸ Estrella was the assistant foreman.

wood stapelasters. Ortiz said he would see what he could do. However, he could do nothing that day because the Redwood stapelasters had already been sent home for the day. On October 22, according to Ortiz, about 6:45 a.m. he spoke to Redwood employees Ismael Sanchez, Ramon Contreras, Ramon Barrosa, and a fourth employee whose name he could not recall.

Ortiz testified that he told them that if they wanted to work at Faultline there was enough work but, as they could see, there was no work at Redwood. One of the employees asked how long they would be working at Faultline. Ortiz said for an undetermined time, it could be a lot or it could be less, they did not know. The four employees agreed to go to Faultline and left about 7 a.m. Later that morning, after an inquiry by Quintero as to their whereabouts, he learned that Sanchez and Contreras had returned to Redwood. When he asked why, Sanchez said the Faultline stapelasters stopped them before they could go in and told them it was best that they did not go in because they were going to have big problems with them. Ortiz telephoned Quintero and told him what had happened. Quintero said he would speak to MacNichol.

According to Ortiz, he talked to Quintero again about 10:30 a.m. Quintero asked him to do everything possible to send him two people, that he would wait for them at the door. Ortiz asked Sanchez and Contreras to return but they would not agree to do so. Ortiz did not speak to any other Redwood stapelasters that morning regarding working at Faultline. Barrosa returned to Redwood that afternoon. Ortiz asked him to go to Faultline to work the next morning. Barrosa agreed. On Tuesday morning, October 23, according to Ortiz, about 6:35 a.m. he asked Francisco Martinez to report to work at Faultline that day. Martinez agreed. Thereafter Barrosa and Martinez worked at Faultline. No replacements were secured for their positions at Redwood.

Javier Sanchez⁹ denied that he told Ortiz that the Faultline stapelasters had threatened them in any way. According to him, he told Ortiz that they did not go in to work at the Faultline plant because the Faultline stapelasters were on strike and might be discharged if the Redwood stapelasters started work there. He denied that he was asked to return to Faultline to work. He also testified that when the four of them was asked to go to Faultline to work they were told that it would be for 2 or 3 days that week only.

As indicated above, I found Sanchez to be an honest, reliable witness whom I credit. Specifically, I credit him that on October 22 the Redwood stapelasters were told that they were being sent over to work at Faultline for 2 or 3 days that week. On the other hand, I found that the alleged discriminatees and Respondent's management and supervisory personnel all had a tendency to slant their testimony in some regards, not necessarily dishonestly but certainly unreliable. Thus, I found the testimony of Respondent's supervisory and management personnel to be not particularly reliable as to statements regarding permanent replacements, those tending to establish a work stoppage prior to leaving the plant on October 19,

⁹ Apparently he and Ismael Sanchez are the same person.

and as to the dates of October 22 as opposed to October 23. Atkins was so intent on establishing that Respondent made permanent replacements that he intertwined the explanations that he wished to establish on the record with his account of conversations so that it was virtually impossible to determine what was said in this regard. When admonished about this, I am convinced that he adopted as conversation what would support the explanations he wished to convey. I am also convinced that Quintero's testimony as to conversations regarding replacements are not reliable and that he really had no such recollection.

Specifically, as to replacements, I do not credit Atkins that he instructed MacNichol that they were to be permanent replacements. In this regard, I note that MacNichol's statement does not refer to permanent replacements. Quintero's account of his conversations with Ortiz does not refer to permanent replacements, or any words which would indicate a permanent transfer to Faultline. Ortiz' account of his conversation with the Redwood stapelasters makes no reference to a permanent transfer to Faultline and by his own account, he told them he did not know how long they would be at Faultline. Since I have concluded, based on credibility resolutions, that the Redwood stapelasters were not transferring to Faultline as permanent replacements, I further find that it is unlikely that the Faultline employees were permanently transferred to stapelaster positions and I do not credit Atkins and Quintero in this regard.

About December 4, Respondent offered Ocana a job as a regular laster on girls' shoes. Ocana refused the job stating to Quintero that the work was too heavy and he had not had experience doing that type of work. Further, according to Atkins, the job paid \$4.50 to \$6.50 an hour, whereas stapelasting paid \$8 to \$9 an hour.

IV. CONCLUSIONS

Respondent contends that it is at least arguable that Respondent was legally entitled to discharge the stapelasters since the October 19 work stoppage was the fourth such in a period of 10 months. In support thereof Respondent cites *N.L.R.B. v. Blades Manufacturing Corporation*, 344 F.2d 998 (8th Cir. 1965). Such reliance is misplaced in the circumstances herein. The facts herein do not establish, as the court found those in *Blades* did, a series of intermittent work stoppages calculated to exert pressure on the employer to accede to the employees' bargaining demands. Here the record does not even establish any previous work stoppage in the sense of an economic weapon. Rather the employees wanted to discuss an increase in the piece rate with a decision-maker so they left their work stations simply to go to the appropriate office to request a wage increase. Insofar as the record reflects, they promptly went to the office and following the conversation immediately returned to work. Also the record does not establish that they did so without permission.

Further, even assuming, *arguendo*, that the three alleged incidents prior to October did occur and were, in fact, work stoppages, there is no evidence that they were motivated by any single goal common to the goal of the October 19 incident. Rather, the first two involve a dis-

pute concerning the method of production. The third involved a request for an increase in the piece rate of a style other than the one involved herein and did, in fact, result in the requested increase. Thus, their conduct was nothing more than a group of employees, in the absence of an established method for otherwise presenting such grievance, stopping work to concertedly present a grievance concerning terms and conditions of employment. Such is within the protection of the Act. *N.L.R.B. v. Kennametal Inc.*, 182 F.2d 817 (3d Cir. 1950), enfg. 80 NLRB 1481 (1948); *The Masonic and Eastern Star Home of the District of Columbia*, 206 NLRB 789 (1973).

The dispute herein involves the piece rate for a completely different style and no one suggests that the employees' actions were anything other than a genuine attempt to secure an increase in the piece rate for that style. In all the circumstances, I find that by their October 19-22 actions, the Faultline staplelasters were not engaged in an intermittent work stoppage which would remove their actions from the protection of the act but rather that they were engaged in the concerted protected activity of attempting lawfully to secure the redress of their grievances as to a term and condition of employment.

I further find that on October 22 when the Faultline staplelasters attempted to enter the plant, no permanent replacements had been hired, transferred, or reassigned to fill their jobs.¹⁰ Respondent contends that the staplelasters never unconditionally offered to return to work but rather conditioned their offers upon a resolution of the piece rate dispute to their satisfaction. The record does not support this contention. They simply attempted to enter the plant in a normal manner at the beginning of their shift and were prevented from doing so with no explanations.

Respondent's argument seems to be based on the alleged continued attempt to discuss with Atkins the problem of the piece rate. However, the only requisite to their right to reinstatement is an indication that they wished to return to work and had abandoned the concerted withholding of their services as a weapon in the dispute. There is no requirement that they abandon attempts by other means to resolve the dispute to their satisfaction. Further, the credited evidence herein does not establish that they attempted to discuss with Atkins the disputed piece rate. The only reference to the subject matter of the dispute was made to Ortiz when they generally explained the dispute to him and told him they wanted to speak to Atkins. Atkins never gave them a chance to state why they were there. He immediately said they were replaced as did MacNichol when Ocana and Campo spoke to him. Considering the action of the guard in barring them from the plant and the statements by Atkins and MacNichol that they had been replaced, any attempt to voice an unconditional offer to return to

work would have been futile and, in the circumstances, is not a prerequisite to their right to reinstatement. *Sigma Service Corporation*, 230 NLRB 316 (1977).

Accordingly, in the circumstances herein, I find that on October 22 the six Faultline staplelasters were barred entry to the plant and told that they had been replaced at a time when, in fact, they had not been permanently replaced and that such action constituted an unlawful termination of their employment in violation of Section 8(a)(1) of the Act. *Mars Sales and Equipment Co.*, 242 NLRB 1097 (1979). I further find that the offer to Ocana of a job as a regular laster was not a valid offer of reinstatement since at the time staplelasting work was still being performed by Respondent at the Faultline plant.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. By discharging and refusing to reinstate employees Alejandro Ocana, Rodriguez Munoz DeRueda, Tigran Pogossian, Fidel Campo, Noel Gonzales, and Rigoberto Cocena on October 22, 1979, because they engaged in a protected concerted refusal to perform work, Respondent has violated Section 8(a)(1) of the Act.
3. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that Respondent be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes of the Act.

Having found that Respondent discharged Alejandro Ocana, Rodriguez Munoz DeRueda, Tigran Pogossian, Fidel Campo, Noel Gonzales, and Rigoberto Cocena in violation of Section 8(a)(1) of the Act, it is recommended that Respondent offer each of them immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered as a result of the discrimination against him by paying him a sum equal to that which would have been earned as wages during the period from the date of their discharges to the date on which Respondent offers reinstatement, less their net earnings, if any, during the said period, with interest thereon to be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).¹¹

Upon the foregoing findings of fact and conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

¹⁰ In view of this finding it is unnecessary to reach General Counsel's argument that even if such permanent transfers or reassignments had been made they did not constitute valid permanent replacements since the replacements jobs were still vacant. *H. & F. Binch Co. Plant of the Native Laces and Textile Division of Indian Head, Inc.*, 188 NLRB 720 (1971), or to reach Respondent's argument that filling the jobs of the replacements were not required since there were valid economic reasons not to fill these vacancies.

¹¹ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

ORDER¹²

The Respondent, Fun Striders, Inc., Culver City, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging, refusing to reinstate, or otherwise discriminating against employees because they engaged in a protected concerted refusal to perform work.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights under the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Offer Alejandro Ocana, Rodriguez Munoz DeRueda, Tigran Pogossian, Fidel Campo, Noel Gonzales, and Rigoberto Cocena each immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights previously engaged, and make each of them whole for any loss of earnings he may have suffered by reason of Respondent's discrimination against him in the manner and to the extent set forth in the section herein entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this recommended Order.

(c) Post at its Faultline plant, in Los Angeles, California, copies of the attached notice marked "Appendix."¹³ Copies of said notice in English and Spanish, on forms provided by the Regional Director for Region 31, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

¹² In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

¹³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(d) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
- To refrain from the exercise of any or all such activities.

WE WILL NOT discharge, refuse to reinstate, or otherwise discriminate against our employees because they engaged in a protected concerted refusal to perform work.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed by Section 7 of the Act.

WE WILL offer Alejandro Ocana, Rodriguez Munoz DeRueda, Tigran Pogossian, Fidel Campo, Noel Gonzales, and Rigoberto Cocena immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and WE WILL reimburse them for any loss of earnings suffered as a result of their unlawful discharge.

FUN STRIDERS, INC.